

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/03/2003

CORAM

THE HON'BLE MR.JUSTICE K. GNANAPRAKASAM

Second Appeal No.328 of 1991

1. Dhandapani (Died)
2. Lalitha
3. Shanthi .. Appellants

(3rd appellant is brought on record
as LR of the deceased 1st appellant
by order dt.2.9.2002 in CMP No.12776/02)

-Vs-

1. Karpakam
2. D. Maheswari
3. D. Seshasai .. Respondents

Appeal against the judgment and decree dated 19.11.1990 made in
A.S.No.13 of 1990 on the file of the learned District Judge, Coimbatore,
against the judgment and decree dated 30.11.1989 made in O.S.No.550 of 1986 on
the file of the learned Subordinate Judge, Coimbatore.

!For Appellants : Mr.R. Kannan

^For Respondents : Mr.D. Rajagopal

:J U D G M E N T

Both the Courts below have concurrently held that the appellants are tenants in respect of the suit property, rejecting their claim that they are entitled to the suit property under the agreement between the first plaintiff's husband and the defendants. In the said context, the appeal was admitted on the following substantial question of law.

" Whether the courts below are right in passing a decree for recovery of possession without resorting for eviction proceeding under the Tamil Nadu Buildings Lease and Rent Control Act, 1960, as amended Act 1 /1980 when particularly the suit property is situate within the city limit of Coimbatore Corporation after having found that the defendants are tenants?"

2. Admittedly, the suit property was assigned to one Devarajan, husband of the first plaintiff and father of plaintiffs 2 and 3 and the

plaintiffs contend that the first defendant became a tenant and the second defendant is his wife.

3. On the contrary, the defendants, particularly the first defendant, put forward a case that though the suit property was assigned in favour of the first plaintiff's husband, by virtue of an arrangement between the first plaintiff's husband and the first defendant, it was given to the first defendant and the entire construction was put up out of the money of the second defendant.

4. To the notice issued by the plaintiffs terminating the tenancy of the first defendant under Ex.A1, the first defendant sent a reply under Ex.A2 wherein it is stated that "my clients wife (thereby meaning the second defendant therein) is the owner of the premises through an understanding with Devarajan (thereby meaning the husband of the first plaintiff). The said Lalitha constructed the building and came into occupation of the same."

5. As the first defendant denied the title of the plaintiffs, the plaintiffs have sent a rejoinder under Ex.A3 forfeiting the tenancy of the defendants by stating "As your client has wilfully and deliberately denied the title of my client's to the suit property, your client has forfeited his tenancy. His tenancy is hereby terminated and determined as your client is setting up his title in his wife."

6. In view of the specific denial of the title of the plaintiffs to the suit property by the first defendant, the plaintiffs, instead of resorting to the proceeding under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Act 1/1980), approached the civil Court and filed a suit for declaration and for recovery of possession.

7. The learned counsel appearing for the appellants has vehemently argued that though the suit property was assigned to the first plaintiff's husband, under the agreement between the first plaintiff's husband and the first defendant, the suit property was given to the first defendant and the entire construction was put up only by the first defendant, with the money of the second defendant.

8. The learned counsel for the appellant has taken me through several vouchers filed by the plaintiffs and the defendants to the extent that though the suit property was actually taken possession by the first plaintiff's husband under Ex.A11 dated 28.6.1976, the constructions were put up much earlier and thus, the constructions were put up only by the second defendant.

9. The learned counsel for the appellant also relied upon Exs.B3 to B6, the receipts for the payment of penal charges. It is contended on behalf of the appellants that even before the order of assignment of the suit property to the first plaintiff's husband, the penal charges were paid by the defendants. However, the admitted fact that the suit property was assigned to the first plaintiff's husband is not disputed and therefore, these documents are of no help to advance the case of the appellants.

10. Having admitted that the suit property was assigned to the first plaintiff's husband, the onus or burden cast upon the defendants to prove that the suit property was given to the first defendant under some arrangement. The arrangement pleaded by the defendant is not supported with any documentary evidence and the oral evidence adduced by the defendants were not accepted by the Courts below.

11. As the Courts below have concurrently held that the arrangement pleaded by the defendants is not proved and the said finding is based upon the question of fact, and in the absence of any other acceptable legal evidence, this Court cannot disturb the said finding and therefore, the same is confirmed.

12. Now the question is whether the suit filed by the plaintiffs without resorting to the remedy available under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is maintainable, when particularly the suit property is situated within the city limits of Coimbatore Corporation, to which place the provisions of Rent Control Act is applicable?

13. The learned counsel for the respondents/plaintiffs has placed reliance on the decision SANKARLAL JAIN v. R. KALAVATHI AMMAL reported in 1990 (1) LW 97, wherein a Division Bench of this Court had an occasion to consider the very same question arose in the said case, and held as under.

" The question whether there was denial of title by the appellant and as a result of which he is disabled from contending that the suit is not maintainable can now be considered. No doubt, and it is true that no issue was framed by the trial Court on this point and in fact no averment was made in the plaint. But the learned Judge, taking note of the fact that in the reply notice as well as in the oral evidence the appellant persisted in denying the title of Kalavathi Ammal, has taken the view that that circumstance is sufficient to hold that a civil suit is maintainable without resorting to the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. In fact, this is what the learned Judge has observed in paragraph 12 of the judgment --

"... Besides, the lessee Shankarlal Jain also, in paragraph 7 of the written statement in O.S.No.9467/72 disputed the title of Kalavathi Ammal to the property. Even prior to the stand so taken by the lessee Shankarlal Jain in his written statement, under Exhibit B-3 dated 2 1.9.1972 (same as Exhibit B-11) the lessee had disputed the title of Kalavathi Ammal to the property. Indeed, even in the course of the trial of the suit, the lessee Shankarlal Jain persisted in his denial of the title of Kalavathi Ammal. It is this that necessitated the trial court to go into the question whether Kalavathi Ammal had title to the property and record a finding to the effect that the contention urged by the lessee Shankarlal Jain that the sale is suspicious cannot be accepted in the face of the clear recitals and the evidence of P.W.1 and P.W.2. It is thus seen that prior to the suit and in the written statement and also in the course of trial in O.S.No.9467 of 19 72, the Lessee Shankarlal Jain had persisted in denying the title of Kalavathi Ammal, though Loganatha Mudaliar put him on notice of the sale by him in favour of Kalavathi Ammal of the property in question. The lessee Shankarlal Jain cannot,

therefore, be heard to say that the question of denial of title did not arise at all in the proceedings. Considered in the light of the stand taken by the lessee Shankarlal Jain referred to already, it is at once apparent that his intention was not to accept the title of Kalavathi Ammal to the property and remain in possession as a tenant, but had repudiated her title to the building. That would be sufficient to conclude that the lessee Shankarlal Jain had wilfully and without any justification denied the title of Kalavathi Ammal. In that event, as laid down in *Rajammal v. A. Athmaramalu* the lessor is not obliged to invoke the jurisdiction of the authorities constituted under the Act, but can resort to a civil Court for appropriate reliefs. Thus, by virtue of the exemption under S.30 of the Act as well as the non-availability of the protection under the Act to the lessee Shankarlal Jain in view of his denial of title of Kalavathi Ammal, the suit in ejectment was properly laid, entertained and decreed. No exception can, therefore, be taken to the maintainability of the suit." "

14. Having relied upon the above said passage, the Division Bench has opined that "we agree with the view taken by the learned Judge in this regard", thereby meaning that on the point of denial of title by the tenant, the civil suit is maintainable, without resorting to the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

15. The case cited supra is squarely applicable to the case on hand and in view of the same, the question raised in this appeal is answered against the appellants and in favour of the respondents/ plaintiffs. As such, the respondents/ plaintiffs are perfectly justified in having instituted the civil suit, without resorting to the remedy under the provisions of the Rent Control Act, in view of the fact that the appellants have denied the title of the landlord.

16. After passing of the order, the learned counsel for the appellants prays that some time may be granted to the appellants for vacating the suit property. Six months time is granted to the appellants to vacate the suit property from the date of the order.

In the result, the second appeal is dismissed. No costs.

Index : Yes

Internet: Yes

To

1. The District Judge
Coimbatore (with records).

2. The Sub Judge
Coimbatore.

3. The Record Keeper
VR Section

High Court, Madras.

Kpl

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